

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Criminal Revision No.893 of 1996

Date of decision: February 22, 2008

Rajinder Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA

Present: Mr. Saurav Mohunta, Advocate for petitioner.

Mr. T. S. Sangha, Senior Advocate with
Mr. Narinder Singh, Advocate for accused.

Mr. Manmohan Sikka, Assistant Advocate General Haryana for the
State

KANWALJIT SINGH AHLUWALIA, J. (Oral)

In the present case, Special Judge Sirsa in a most cryptic manner, without any application of mind, has discharged the accused only on the ground that in application submitted by DSP, it has been stated that only charge under Section 323 IPC is made out. It was incumbent upon the Court to apply its own mind and arrive at its own conclusion. The report of DSP cannot be accepted as a final word. The Special Judge Sirsa could not make out the difference that application was for discharge from custody and not discharge from case. Furthermore, no notice was issued to complainant before accepting the request in writing made by the DSP.

The mandate laid in Bhagwant Singh v. Commissioner of Police & Anr. (SC) 1985 (2) CLR Vol.XVIII (353) has not been complied

with by the Special Judge. On this score alone, the order is liable to be set aside. Hence, impugned order is set aside.

Parties will cause their appearance in the Court of learned trial Court on 24th April, 2008. The learned Special Judge Sirsa will formulate its own opinion, whether the request of the prosecution has to be accepted or not or challan is to be awaited. Needless to say that before passing any order, complainant and counsel for the accused will be heard. Anything said herein shall not be considered expression of opinion on the merits of the case.

[Kanwaljit Singh Ahluwalia]
Judge

February 22, 2008.
rps